

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:

JEFFERSON COUNTY, ALABAMA

Debtor

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CASE NO. 11-05736-TBB-9

**BEERS PROPERTIES , LLC'S LIMITED OBJECTION TO DEBTOR'S FIRST
OMNIBUS MOTION TO REJECT CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES**


COMES NOW, Beers Properties, LLC, landlord of the Forestdale Satellite Courthouse lease (copy of lease attached as Exhibit "A"), and submits its Limited Objection to the Debtor's First Omnibus Motion to Reject Certain Executory Contracts and Unexpired Leases (Doc No. 315) as follows:

1. Beers Properties, LLC joins in with the Limited Objection filed by BBA Development, LLC (Doc No. 473).
2. Beers Properties, LLC asserts that the Debtor has not vacated the Forestdale premises as of the end of November 30, 2011 with personal property still being in said premises. It is counsel for Beers Properties, LLC understanding from counsel for the Debtor that the Debtor will completely vacate the premises by December 31, 2011, and that rent for December 2011 will be paid to Beers Properties, LLC by the Debtor.
3. Beers Properties, LLC objects to the effective date of the Debtor's Rejection of the Forestdale Lease being November 30, 2011 since the Debtor did not vacate the property by that date.

4. Beers Properties, LLC further objects to the Debtor's Motion being heard now as it believes the Motion to be premature until the Court has ruled upon the various Motions to Dismiss this Chapter 9 proceeding. Beers Properties, LLC requests the court to not rule on the Debtor's Motion to reject the lease to the Forestdale Property until this Court has determined that the Debtor has the right to file this Chapter 9 case. Otherwise, if this case were to be later dismissed, there could be some confusion as to what affect any Order rejecting these Leases might have on the parties.

5. Beers Properties, LLC further objects to the Debtor's Motion in that the Debtor has failed to pay the 2011 property taxes required by the lease. Property taxes became due and payable on October 1, 2011 and therefore were due and required to be paid prior to the requested effective date of the lease rejection. As such, Beers Properties, LLC objects to the Debtor's Motion unless the Debtor intends to pay the 2011 property taxes as required by the lease and which were due prior to the requested rejection date.

WHEREFORE, Beers Properties, LLC requests this Court to enter an Order sustaining this limited objection and/or continuing the hearing on the Debtor's Motion until this Court rules on the several Motions to Dismiss this Chapter 9 case which are pending before the Court.


W. L. Longshore, III, Attorney for
Beers Properties, LLC

OF COUNSEL:
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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2011, a copy of the foregoing was served through the CM/ECF system on all parties on the Master Service List on said system and more specifically to the following by email:

Jefferson County, Alabama c/o Patrick Darby c/o Jay Bender Bradley Arant Boult Cummings LLP 1819 Fifth Avenue North Birmingham, AL 35203 pdarby@babbc.com jbender@babbc.com	Jefferson County Special Counsel J.F. "Foster" Clark, Esq. Balch & Bingham, LLC 1901 6th Avenue North 2600 AmSouth Harbert Plaza Birmingham, AL 35203-4644 fclark@balch.com
Jefferson County, Alabama c/o Kenneth Klee c/o Lee Bogdanoff Klee, Tuchin, Bogdanoff & Stern, LLP 1999 Avenue of the Stars, Thirty-Ninth Floor Los Angeles, CA 90067-5061 kklee@ktbslaw.com lbogdanoff@ktbslaw.com	Jefferson County Special Counsel J. Hobson Presley, Jr. Presley Burton & Collier, LLC 2801 Highway 280 South, Suite 700 Birmingham, AL 35223-2483 hpresley@presleyllc.com
Jefferson County Attorney Jeffrey M. Sewell, County Attorney Room 280, Jefferson County Courthouse 716 North Richard Arrington Jr. Blvd. Birmingham, AL 35203 sewellj@jccal.org	Bankruptcy Administrator for the Northern District of Alabama (Birmingham) Office of the Bankruptcy Administrator c/o J. Thomas Corbett, Esq. United States Bankruptcy Court Robert S. Vance Federal Building 1800 5th Ave. North Birmingham AL 35203 Thomas.Corbett@alnaba.uscourts.gov



W. L. Longshore, III

EXHIBIT "A"

**Amended and Restated
Lease Agreement
Jefferson County
Forestdale Satellite Office**

July 24, 2006

APPROVED BY THE
JEFFERSON COUNTY COMMISSION

DATE: _____
MINUTE BOOK: _____
PAGE(S): _____

**AMENDED AND RESTATED LEASE AGREEMENT FOR THE ENTIRE BUILDING
(12000 +/- SQUARE FEET)**

THIS LEASE AGREEMENT made and entered into this 29 day of August, 2006, by and between **BEERS PROPERTIES, LLC**, an Alabama limited liability company, c/o GREG BEERS, whose address is **2100 Data Park Drive, Suite 400, Birmingham, AL 35244** (hereinafter referred to as "Landlord"), and **JEFFERSON COUNTY, ALABAMA** (General Services Division) whose address is Department of General Services, Room 1, Courthouse, Birmingham, Alabama 35203 (hereinafter referred to as "Tenant").

RECTIALS

Landlord and Tenant entered into that certain Lease Agreement dated June 10, 2003, wherein Landlord constructed the Leased Premises as herein defined for the Tenant and Landlord and Tenant have agreed that the Commencement Date under that Lease was April 1, 2004. Landlord and Tenant have re negotiated the term and rental payments and have agreed to enter into this Amended and Restated Lease Agreement as a new lease between the parties with an Effective Date of September 1, 2006, thereby replacing the Lease Agreement dated June 10, 2003 in its entirety.

Section 1. LEASED PREMISES:

(a) Landlord hereby agrees to lease to Tenant and Tenant hereby agrees to rent from Landlord a free standing building consisting of approximately 12,000 square feet (hereinafter referred to as the "Leased Premises") at 1485 Forestdale Blvd. Birmingham, AL 35214: (hereinafter referred to as the "Building"), as shown on Exhibit "A".

Landlord represents to the Tenant that the "Building" will be solely occupied by the Tenant with no other Tenants located on the subject property during the term of this Lease.

(b) For all purposes under this lease, the term "floor area" of the Leased Premises in the "Building" shall be approximately 12,000 square feet. In computing the leaseable area of the "Building" no deductions shall be made for columns, partitions, stairs or other structures or equipment.

(c) Landlord hereby covenants that no portion of the "Building" or property shall be leased or otherwise used by any other tenants or other occupants during the term of this Lease.

Section 1.A LANDLORD'S CONSTRUCTION: [INTENTIONALLY OMITTED]

Section 2. COMPLETED DOCUMENT AND WAIVER: The submission of this Lease for examination by Tenant does not constitute an offer or opinion to lease the Leased Premises, nor is it intended as a reservation of the Leased Premises for the benefit of Tenant. On the contrary, it is expressly understood that this Lease shall not be effective or binding upon the parties until it is fully and properly executed by Tenant and Landlord.

Section 3. LENGTH OF TERM: The term of this Lease shall have an Effective Date of September 1, 2006, and shall run through the month of March, 2034, unless sooner terminated as herein provided

Section 4. LEASE COMMENCEMENT DATE: The Lease Commencement Date for this Amended and Restated Lease Agreement shall be September 1, 2006.

Section 5. SECURITY DEPOSIT: (Not required by Landlord)

Section 6. STATMENT AS TO LEASE TERM: [INTENTIONALLY OMITTED]

Section 7. RENT: Tenant covenants and agrees that it will pay Landlord as fixed minimum rent for the Leased Premises during the term of this Lease, as follows:

DATES:	MONTHLY RENT:
September 1, 2006 through March 31, 2009	\$13,000.00
April 1, 2009 through March 31, 2010	\$14,755.00
April 1, 2010 through March 31, 2011	\$15,168.14
April 1, 2011 through March 31, 2012	\$15,592.85
April 1, 2012 through March 31, 2013	\$16,029.45
April 1, 2013 through March 31, 2014	\$16,478.27
April 1, 2014 through March 31, 2015	\$16,939.66
April 1, 2015 through March 31, 2016	\$17,413.97
April 1, 2016 through March 31, 2017	\$17,901.57
April 1, 2017 through March 31, 2018	\$18,402.81
April 1, 2018 through March 31, 2019	\$18,918.09
April 1, 2019 through March 31, 2034	\$17,918.00

Within ninety (90) days after April 1, 2019, Landlord will, at Landlord's cost and expense, replace all the original cooling units with new high efficiency units, and will provide to Tenant an interior refurbishment allowance of \$15,000.00, and will repave the asphalt drives and parking areas.

Section 8. ADDITIONAL RENT: In addition to the foregoing fixed minimum rent, all other payments hereunder to be made by Tenant to Landlord shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and shall be due and payable on demand or together with the next succeeding installment of fixed rent, whichever shall first occur. Landlord shall have the same remedies for failure to pay "additional rent" as for a nonpayment of rent.

Section 9. NO PARTNERSHIP: Landlord shall in no event be construed, held or become in any way or for any purpose a partner, associate or joint venturer or Tenant or any party associated with Tenant in the conduct of Tenant's business or otherwise.

Section 10. PLACE OF PAYMENTS AND DELIVERY REPORTS: All rents and other payments payable hereunder by Tenant to Landlord shall be paid, in lawful money of the United States, to Landlord, at 2100 Data Park Drive, Birmingham, Alabama 35244, and all reports are required to be rendered to Landlord by Tenant shall be delivered to such address, unless Landlord shall otherwise designate by Notice of Tenant.

Section 11. DELIVERY OF POSSESSION: [INTENTIONALLY OMITTED]

Section 12. ALTERATIONS: Tenants shall have the right to make such non-structural alterations to the interior of the building as it may desire, provided, however, that any repairs or alterations undertaken by the Tenant shall not impair the structural safety of the building and provided that Tenant notifies Landlord in writing prior to the initiation of such repairs or alterations. Landlord, however reserves the right to enter upon said premises and to make such repairs and to do such work on said premises as Landlord may deem necessary or proper or that the Landlord may be lawfully required to make, with the least disturbance to Tenant. Landlord reserves the right to visit and inspect said premises at all reasonable time during the term hereof, and show space to prospective tenants during the last year of the term hereof.

Section 13. TENANTS INSTALLATIONS: Tenant shall, at Tenant's cost and expense, at all times during the term of this Lease keep the Leased Premises equipped with all trade equipment, furniture, operating equipment, furnishing fixtures, floor coverings and exterior signs and any other equipment necessary for the proper operation of Tenant's business. All fixtures installed by Tenant shall be new or completely reconditioned. Tenant shall not do any construction work or alterations, nor shall Tenant install any equipment other than unattached movable trade fixtures, without first obtaining Landlord's written approval and consent. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought. Any alterations, additions, improvements and fixtures installed by Tenant to the Leased Premises, other than unattached movable trade fixtures, furniture and decorations, shall upon the expiration or earlier termination of this Lease become the property of Landlord. Unattached moveable trade fixtures shall not include, among other things, store front, doors or gates, plumbing, electrical, wall and ceiling electrical fixtures, sprinklers, and heating, ventilating and air conditioning systems. No item of whatever nature not actually purchased and installed by Tenant shall be removed. Provided Tenant is not in default hereunder, Tenant may upon the expiration or termination of this Lease, remove unattached movable trade fixtures, furniture and decorations installed by Tenant, and Tenant shall completely and satisfactorily repair any and all damage to the Leased Premises resulting from such removal. Any such personal property of Tenant not removed within five (5) day following notices by Landlord to Tenant to remove the same shall, at Landlord's option, become the property of Landlord.

At termination of this Lease, the counters and partitions installed by Tenant shall remain as property owned by the Tenant. The Tenant shall promptly remove said items upon termination of the lease and vacation of the premises and repair any damage caused by such removal.

Section 14. USE OF PREMISES: Tenant covenants to use the Leased Premises solely for the purpose of office space and for no other use.

Section 15. OPERATING OF BUSINESS: Tenant covenants at all times during the lease term, except when and to the extent the Leased Premises are untenable by reason of fire or other casualty, or condemnation, to: (a) conduct its business in the entire Leased Premises in a high grade and reputable manner so as to help establish and maintain a good reputation for the "Building"; and (b) keep the Leased Premises and exterior and interior portions of windows, doors and all glass and plate glass in a neat, clean, sanitary and safe condition.

Section 16. LAWS, WASTE OR NUISANCE: Tenant shall at its own cost and expense; (a) comply with all governmental laws, ordinances, order and regulation affecting the Leased Premises now in force or which hereafter may be in force; (b) comply with and execute all rules, requirements and regulations of Landlord's insurance carriers and other organizations establishing insurance rates; (c) not suffer, permit to commit any waste or nuisance; (d) keep the Lease Premises equipped with all safety appliances required by Tenant's use of the Leased Premises; and (e) procure all licenses and permits required for Tenant's use of the Leased Premises.

Section 17. SIGNS, AWNINGS AND CANOPIES: Tenant shall, at Tenant's cost and expense, purchase identification signs for the exterior of the Tenant's store front as approved by Landlord, and shall install and maintain them, in good condition and repair. Landlord will furnish at his expense one freestanding sign. Other than the foregoing identification signs, Tenant shall not place or suffer to be placed or maintain any sign, awning or canopy in, upon or outside the Leased Premises or in the "Building". The costs of producing and installing Tenant signage will be the sole expense of Tenant.

Section 18. ASSIGNMENT AND SUBLETTING: Tenant shall not assign, mortgage or encumber this lease, in whole or in part sublet all or any part of the Leased Premises without the prior written consent of Landlord. The Landlord's decision to withhold such consent, for whatever reason, if any, shall be absolute and binding on Tenant. Landlord shall have the right to arbitrarily withhold consent at its sole discretion and both parties acknowledge that this has been separately considered and bargained for. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigned or

subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. Notwithstanding any assignment or subleases, Tenant shall remain fully liable and shall not be released from any of Tenant's obligations of liabilities under this Lease. If Tenant is a corporation and if any transfer, sale, pledge or other disposition of the common stock shall occur or power to vote the majority of the outstanding capital stock be changed, then Tenant shall so notify Landlord and Landlord shall have the right, as its option, to terminate this Lease upon five (5) days notice to Tenant.

Section 19. REPAIRS:

(a) Landlord is responsible for maintaining the following: exterior of the building and grounds; pavement and sidewalk maintenance and repair; replacement of dead shrubs or trees; exterior masonry damage due to weather, accident or poor construction; roof leaks or damage; light poles; sewer lines; storm drain; water lines; gas lines and power lines. If Tenant recognizes a bonafide problem with any of the above exterior items he may notify the Landlord in writing. The Landlord has ninety (90) days to remedy and correct the problem. If the Landlord fails to correct the problem within the ninety (90) days, the Tenant may, at his choosing, correct the problem and deduct the cost of the correction from the Landlord's rent. If the Tenant corrects the problem, he must obtain at least two qualified bids for the materials and work to be done and select the lowest bidder. Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment, fixture or other personal property of Tenant or Tenant's business.

(b) Tenant shall keep and maintain in good order, condition and repair the Leased Premises and every part thereof, except as hereinabove provided, including, without limitation, the exterior and interior portions of all doors, door checks, security gates, windows, glass, utility facilities, plumbing and sewage facilities within the Leased Premises or under the floor slab including free flow up to the main sewer line; all heating and air conditioning equipment and apparatus including exterior mechanical equipment; exterior utility facilities and exterior electrical equipment serving the Leased Premises; and all plate glass, interior walls, floor and ceilings, including interior painting; and shall at all times comply with applicable building codes. Tenant shall comply with all laws, rules, regulations and ordinances applicable to the Leased Premises and Tenant's use and occupancy of the same. Tenant shall contract for, in its own name, and shall pay for (a) a qualified service contractor or tenants staff to inspect, adjust, clean and repair heating, ventilating and air conditioning equipment, including changing filters at least semiannually, and (b) a qualified service contractor to render pest control services to the Leased Premises. If replacement of HVAC or any major system is needed, Landlord is responsible.

(c) If Tenant refuses or neglects to make repairs required hereunder to be made by Tenant, or if repairs are required by reason of the act or omission of Tenant, Tenant's employees, agents, invitees, licensees or contractors, Landlord shall have the right, but shall not be obligated, to make such repairs on behalf of and for the account of Tenant. In such event, such work shall be paid for by Tenant as additional rent promptly upon receipt of a bill therefore.

Section 20. MECHANICS', MATERIALMEN'S AND OTHER LIENS: Should any mechanics', materialmen's or other liens be filed against the Leased Premises or any part thereof for any reason whatsoever by reason of Tenant's act or omissions or because of a claim against Tenant, Tenant shall cause the same to be cancelled and discharged of record by bond or otherwise within ten (10) days after notice by Landlord.

Section 21. UTILITY SERVICES AND CHARGES: Tenant shall pay all charges for heat, water, electricity, and other utility services, used or consumed in the Leased Premises, including, but not limited to, sewer and sewer service charges. Landlord shall not be under any responsibility or liability in any way whatsoever for the quality, quantity, impairment, interruption, stoppage or other interference with service involving water, heat, gas, electric current for light and power, telephone or any other service.

Section 22. USE OF COMMON AREAS AND FACILITIES: Landlord will furnish bulbs for exterior parking lot poles; Tenant will replace bulbs as necessary. Tenant will keep the grounds neat and orderly including picking up debris. Landlord will be responsible for maintenance of trees, shrubs and

grass.

Section 23. INDEMNITY, LIABILITY INSURANCE, PAYMENT OF COSTS AND EXPENSES:

(a) Tenant represents and agrees that it is self insured, and, shall store its property in and shall occupy the Leased Premises at its own risk. Tenant hereby releases Landlord, to the full extent permitted by law, from all claim of every kind resulting in loss of life, personal or bodily injury or property damage. Landlord shall not be responsible or liable for any loss or damage to Tenant's agents, servants, employees, guest, or invitees, on the premises, or property that may be damaged or suffer loss by or through the acts or omissions of persons occupying adjacent, connecting or adjoining premises except for Landlord's own negligence. Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building, other than the leased premises, in the "Building" or in any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused by or resulting from bursting, breakage or by from leakage, steam or now or ice, running, backing up, seepage or the overflow of water or sewage or for any injury or damage caused by or resulting from acts of God or the elements, or for any injury or damage caused by or resulting from an defect or negligence in the occupancy, construction, operating or use of any premises, building, machinery, apparatus or equipment in or about the "Building" by any person or by the acts of negligence of any occupant of any premises constituting a part of the "Building".

(b) Tenant certifies that its employees are covered by the Alabama Workmen's Compensation Law and regulations, which law and regulations shall be followed by Tenant in all appropriate cases. Tenant further certifies that it shall respond in accordance with applicable law to any claims, suits or actions for damages in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon, at or from the leased premises.

Section 24. LANDLORD'S INSURANCE: Landlord shall procure and maintain insurance covering fire and such other risks as are from time to time concluded in standard extended coverage endorsements, insuring in an amount after completion of construction of not less than ninety percent (90%) of the full insurable value (excluding foundation and excavation costs and costs of underground flues, pipes and drains) of the improvements and betterments installed by Landlord in the "Building" or such greater coverage as may be required by Landlord's mortgagee).

Section 25. REAL ESTATE TAXES: Tenant is responsible for all applicable real estate and property taxes and assessments levied or assessed directly or indirectly against the land, buildings, or other improvements constituting the "Building", enlarged or reduced from time to time. Said taxes shall be due and payable annually upon receipt by Tenant of Landlord's invoice of taxes. Notwithstanding the above, in the event that the Landlord is relieved of the obligation to pay ad valorem taxes on the Leased Premises on the basis that the Tenant is a governmental authority, then Tenant shall likewise have no obligation to pay its share of ad valorem real estate taxes.

Section 26. FIRE OR OTHER CASUALTY: If the Leased Premises shall be destroyed by fire or other casualty the fixed minimum rent payable hereunder shall be abated proportionately as to the portion of the Leased Premises rendered untenable from the date of such casualty until the Leased Premises are rendered wholly tenantable. If the Leased Premises are rendered wholly untenable, Landlord may either elect to repair the damage or may terminate this Lease by giving Tenant notice of termination within ninety (90) days after the occurrence of such event, the termination to be effective as of the date of the occurrence of such event. Rents payable hereunder shall be paid to the date of such termination to be effective as Landlord shall make an equitable refund of rents paid in advance. If Tenant has closed, Tenant shall promptly reopen for business when the Leased Premises shall have been repaired. Nothing hereinabove contained shall impose upon Landlord any liability to repair, rebuild or replace any property belonging to Tenant.

Landlord acknowledges that Tenant is self insured for most purposes. Tenant at its discretion may

purchase at Tenant's expense and carry fire and extended coverage insurance, issued by a company licensed to do business in Alabama, in an amount adequate to restore and repair Tenant's property in, at or on the Leased Premises to its previous condition or better. If Tenant elects to purchase such insurance, Tenant will purchase such insurance, Tenant will furnish Landlord certificates of such insurance.

Section 27. CONDEMNATION:

(a) **Total.** If the whole of the Leased Premises shall be taken by condemnation or other proceedings for any public or quasi-public use or purpose then this Lease and the term hereof shall terminate as of the date Tenant is required to yield possession of the Leased Premises pursuant to such taking. Provided, upon no less than six (6) months notice to Landlord, tenant may terminate the lease.

(b) **Partial.** If any part of the Lease Premises shall be taken as aforesaid, and such partial taking shall render that portion not so taken unsuitable for the business of Tenant, then this Lease shall terminate as aforesaid. If such partial taking is not sufficiently extensive to render the premises unsuitable for the business of Tenant, then this lease shall continue in effect except that the fixed minimum rent shall be reduced in the same proportion that the floor areas of the Leased Premises taken bears to the original floor area and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations so as to constitute the Leased Premises a complete architectural unit, but in no event shall Landlord be required to spend for such work an amount in excess of the net amount received free and clear by Landlord as damages for the part of the Leased Premises so taken; provided however, if more than twenty percent (20%) of the floor area of the building of which the Leased Premises are a part shall be taken as aforesaid (whether or not any portion of the Leased Premises is taken) Landlord may terminate this Lease by giving Tenant notice of termination within ninety (90) days after such taking, the termination to be effective as of the date Tenant is required to yield possession pursuant to such taking. Termination is to be effective as provided in (a) above. If this Lease is terminated as provided in this Section, rents shall be paid to the day that tenant quits the premises or possession is so taken by public authority and Landlord shall make an equitable refund of any rents paid by Tenant in advance.

(c) **Award.** Tenant shall not be entitled to and expressly waives all claim to any condemnation or other award for any such taking, whether whole or partial, and whether for diminution in value of the Leasehold or to the fee, or otherwise, except that Tenant shall have the right, to the extent permitted by law and provided that the same shall not reduce Landlord's award, to claim from the condemner, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for damage to Tenant's business and trade fixtures.

Section 28. DEFAULT BY TENANT:

(a) The happening of any one or more of the following events shall constitute a default under this Lease:

(i) Failure by Tenant to pay any rent or other payment or charge provided in this Lease to be paid by Tenant, as and when such payment becomes payable hereunder, and continuance of such failure for a period of ten (10) days after written notice to Tenant that such payment has not been received unless such failure has occurred twice in the immediately preceding twelve months, in which instance no notice shall be required.

(ii) Failure by Tenant to perform or observe any other agreement, covenant or condition required by this Lease to be performed or observed by Tenant, for a period of fifteen (15) days after written notice to Tenant of such default, or if more than fifteen (15) days shall be required because of the nature of such default, failure by Tenant to commence within said fifteen day period and thereafter to proceed diligently to cure such default;

(iii) The filing of a voluntary petition in bankruptcy by Tenant, or the adjudication of Tenant as a bankrupt, or the approval by a court of competent jurisdiction as having been filed in good faith

of a petition in any bankruptcy proceeding for the reorganization of Tenant instituted under Chapter XI or XIII of the Bankruptcy Code (Title 11, U.S.C.), as amended, or under any similar provision of any future bankruptcy act for the same or similar relief, and the time to appeal from such adjudication has expired; or, if a petition in bankruptcy is filed against Tenant and is not dismissed within ninety (90) days subsequent to being filed or in the event a petition for reorganization under Chapter XI or XIII and the failure of the trustee to assume the Lease with all the assurance provided by the bankruptcy act within ninety (90) days of the filing of the petition, such failure to be considered a rejection of the Lease.

(iv) The making of an assignment by Tenant or the benefit of any or all of its creditors;

(v) Appointment by a court of competent jurisdiction of a receiver for all or any part of the properties of Tenant;

(vi) Vacation by Tenant of all or any portion of the Leased Premises, or abandonment of the properties of Tenant;

(vii) The removal, or attempted removal from the Leased Premises, except in the usual course of business, of the goods, furniture, fixtures or other property of Tenant brought thereon;

(viii) The taking of Tenant's interest in this Lease by execution or other process of law in an action against Tenant.

(b) Whenever any such event of default shall have occurred or continues beyond the applicable period of time after any required notice has been received as provided in Section 28, (a) (i) or (a) (ii), as the case may be, Landlord shall have the right at Landlord's option, to immediately, or at any time thereafter, terminate this Lease by giving Tenant ten (10) days notice of such termination and this Lease shall terminate on the date specified in such notice of cancellation, but Tenant shall remain liable hereunder as hereinafter provided. If the notice provided shall have been given and the Lease shall terminate as aforesaid or should Landlord elect not to terminate this Lease, in either event Landlord shall have the immediate right to re-enter the Leased Premises, with or without process of law, using such force as may be necessary, and remove all persons and property from the Leased Premises, and Landlord shall not be deemed guilty of trespass nor become liable for any loss or damage which may be occasioned thereby. Landlord shall have a lien for the payment of all sums agreed to be paid by Tenant hereunder upon all Tenant's property, which shall be in addition to any Landlord's lien now or that may hereafter be provided by law.

Should Landlord elect to re-enter, Landlord may make such alterations and repairs as may be necessary in order to relet the Leased Premises and may relet the Leased Premises or any part thereof (Landlord shall make a reasonable effort relet the premises by placement of signs in the store front and minimal advertising) for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rent and upon such other terms and conditions as Landlord may deem advisable, applying the net rents received by Landlord from such reletting, first to the payment of Landlord's costs and expenses in dispossessing Tenant and in reletting the Leased Premises, including, but not limited to, attorney's fees, court cost, brokerage fees, and the costs and expenses of such alterations and repairs, second, to the payment of rent and any other indebtedness of Tenant due and unpaid to Landlord hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If such rent received from such reletting during any month be less than that due to be paid hereunder during that month by Tenant, Tenant shall pay any deficiencies to Landlord. Such deficiency shall be calculated and paid monthly.

In the event Landlord elects to terminate this Lease as provided herein, Landlord may recover from Tenant all damages Landlord may incur by reason of Tenant's default, including but not limited to, costs or repossessing the Leased Premises, attorney's fees and court costs, and including the worth at the time of such termination of the excess, if any, of the amount of rent and other charged provided herein to be paid by Tenant to Landlord for the remainder of the stated term of this Lease over the then reasonable

rental value of the Leased Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable by Tenant to Landlord.

In determining the monthly rent which would be payable by Tenant in the event of re-entry by Landlord as provided by this section, the annual rent for each year of the unexpired term shall be deemed to be (but only for the purpose of this Section) the average annual rental (computed upon the aggregate of the fixed minimum rent and other charges) for the period beginning with the commencement of the term of this lease and ending with the date of re-entry.

In addition to the rights and remedies of Landlord specified in this section, Landlord shall, in the event of Tenant's default under this Lease, have such other rights and remedies as may be affordable by law or equity. The rights and remedies given Landlord under this Section are distinct, separate and cumulative and the exercise of any of them shall not be deemed to exclude Landlord's right to exercise any or all of the others.

No re-entry by Landlord under the provisions of this section shall bar the recovery of rent or damages for the breach of any of the covenants, agreements or conditions on the part of Tenant herein contained. The receipt of rent after breach or condition broken, or delay on the part of Landlord to enforce any right hereunder shall not be deemed a waiver or forfeiture of Landlord of any of the rights or remedies provided herein.

Landlord is not required to give notice of default and/or termination, or re-enter the premises prior to the institution of any lawsuit against Tenant for breach of their terms or conditions of this agreement.

Section 29. DELETED

Section 30. ACCESS TO PREMISES: Landlord shall have the right to place, maintain and repair all utility equipment of any kind in, upon and under the Leased Premises as may be necessary for the servicing of the Leased Premises or other portions of the "Building". Landlord shall also have the right to enter the Lease Premises at all times to inspect or to exhibit the same to prospective purchasers, mortgagees, and tenants and to make such repairs, additions, alterations and improvements as Landlord may deem desirable. Landlord shall be allowed to take all material in, to and upon the Leased Premises that may be required therefore without the same constituting an eviction of Tenant in whole or in part, and the rents reserved shall in no way abate while said work is in progress by reason of loss or interruption of Tenant's business or otherwise and Tenant shall have no claim for damages. The provisions of this Section shall not be for the maintenance or repair of the Leased Premises or the building of which it is a part, except as otherwise herein specifically provided. During the six (6) months prior to the expiration of this Lease, Landlord may place upon the Leased Premises "For Rent" signs, which Tenant shall permit to remain therein.

Section 31. QUIET ENJOYMENT AND MORTGAGES: Landlord covenants that subject to Tenant's complying with all the terms and conditions of this Lease on Tenant's part to be complied with and performed, Tenant shall have the peaceable and quiet possession of the Leased Premises during the term of this Lease. Landlord and Tenant agree that this Lease is and shall be subject and subordinate at all times to all ground Leases, all mortgages, which may now or hereafter affect or relate to the real property of which the Leased Premises form the part, and all renewals, modification, consolidations, participation, replacements and extensions thereof. The term "mortgages" as used herein shall be deemed to include trust indentures, deeds of trust and security deeds. Tenant agrees to attorn to any underlying ground lessor or mortgagee who shall succeed to Landlord's interest in this Lease upon request of such ground lessor or mortgagee, provided that Tenant's rights under this Lease shall continue in full force and effect and Tenant's possession be undisturbed so long as Tenant shall not be in default under this Lease.

If any mortgagee requires that this Lease be prior rather than subordinate to any such mortgage or ground Lease, Tenant shall promptly upon request therefore execute a document effecting and/or acknowledging such priority which document shall contain at the option of such mortgagee an attornment agreement to the mortgagee as Landlord in the event of foreclosure or to any part acquiring title through

such mortgage in such event, provided that Tenant's rights under this Lease shall continue in full force and effect and Tenant's possession be undisturbed so long as Tenant shall not be in default under this Lease.

Section 32. FURTHER AGREEMENTS AND COVENANTS OF TENANT: Tenant further covenants and agrees to (a) receive and deliver goods and merchandise only by way of the rear of the Leased Premises or any other location designated by Landlord, and only at such times as may be designated for such purpose by Landlord; (b) store all trash and refuse in adequate containers within the Leased Premises, in a neat, clean conditions so as not be visible to the public and so as not to create any health or fire hazard and to attend to the daily disposal thereof at Tenant's expense and in a manner as may be directed by Landlord; (c) use and cause to be used plumbing facilities only for the purpose for which they are constructed and no foreign substance of any kind shall be thrown herein; (d) keep the outside areas of Leased Premises clean and free from dirt and rubbish; (e) not use the public or common areas in the "Building" for business purposes and not distribute handbills or other advertising matter therein; (f) park Tenant's vehicles and cause Tenant's employees to park their vehicles only in those portions of the parking area, if any, designated for that purpose by Landlord; (g) not use or permit the use of any objectionable advertising medium such as, but not limited to, loud speakers, phonographs, public address systems, sound amplifiers, radio or broadcasts within the "Building" which is in any way audible or visible outside the Leased Premises; (h) not burn trash or garbage in or about the Leased Premises, the "Building" or within one mile of the outside of the "Building"; (i) not place, suffer or permit displays, decorations or shopping carts on the sidewalk in front of the Leased Premises or on or upon any of the common areas in the "Building"; (j) not conduct or permit any going-out-of-business, fire or auction sales on or about the Leased Premises; and (k) conform and cause Tenant's employees to conform to all rules and regulations which Landlord may adopt for the use and care of the Leased Premises, the building of which the Leased Premises are a part and the common areas and facilities of the "Building".

Section 33. UNAVOIDABLE DELAYS: In the event that either party hereto is rendered unable to carry out any obligations of such party under this Lease, either wholly or in part, because of unavoidable delays, then such obligations shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch. The term "unavoidable delay" as employed herein shall mean acts of God, strikes, lockouts, wars, insurrections, riots, epidemics, lighting, earthquakes, fires, storms, floods, washouts, arrests and restraint of rules and people, civil disturbances, explosions, breakage or accidents to machinery, failure to obtain materials and supplies due to governmental regulations, and causes of like or similar kind, whether herein enumerated or not, and not within the control of the party claiming suspension, and which by the exercise of the due diligence such party is unable to overcome; provided, however, notwithstanding any contrary provisions contained in this Section 35, no obligation of either party hereto shall be suspended where such obligation is for, or related to the payment of money.

Section 34. SURRENDER AT END OF TERM: Upon the expiration of the term hereof, or sooner termination of this Lease, Tenant agrees to surrender and yield possession of the Leased Premises to Landlord, peacefully and without notices and in good order and condition, but subject to ordinary wear and reasonable use thereof and subject to such damage or destruction or condition as Tenant is not required to restore or remedy under other terms and conditions of this Lease.

Section 35. ESTOPPEL CERTIFICATES: At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord or mortgagee a statement in writing certifying among other things, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and the date to which the fixed minimum rent and other charges have been paid.

Section 36. WAIVER OF SUBROGATION: If the same can be done (and if payment of additional premium is required the party benefiting shall pay such additional premium), each party to this Lease shall require each of the insurers under policies of insurance which such party procures or maintains in relation to the Leased Premises the contents thereof to waive in writing any and all rights of subrogation which such insurer might otherwise have against the other party to this Lease or its agents or employees notwithstanding liability, expense, claim or damage to the other's property or interest in respect to which

and to the extent that said property or interest is covered by insurance, whether such loss or damage be occasioned by the negligence of such party, its servants, employees or otherwise. The parties hereto do hereby waive any and all right of recovery against each other for losses covered by such policies, provided the insurance companies issuing same shall waive subrogation rights.

Notwithstanding any contrary provisions contained in this Section, this Section shall not apply to relieve Tenant of its obligation to repair, at Tenant's cost and expense, as required by any other sections of this Lease.

Section 37. LANDLORD'S RIGHTS TO CURE TENANT'S DEFAULTS: Landlord may, but shall not be obligated to, cure at any time, without notice, any default under this Lease and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing such default, except late rent, shall be paid by Tenant to Landlord on demand.

Section 38. NO WAIVER: Failure of Landlord to insist upon the strict performance of any provision of this Lease or to exercise any option or any rules and regulations shall not be construed as a waiver in the future of any such provision, rule or option. The receipt by Landlord of rent with knowledge of the breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver be in writing and signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent shall be deemed to be other than on account of the earliest rent then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy in this Lease provided. No waiver by Landlord in respect to one Tenant shall constitute a waiver in favor of any other Tenant in the "Building".

Section 39. NOTICES: Any notice and demand which may be or is required to be given under this Lease shall be in writing and sent by United States Certified or Registered Mail, postage prepaid, and shall be addressed (a) if to Landlord, c/o Greg Beers, 2100 Data Drive, Birmingham, AL 35244, (b) if to Tenant, at the address shown above. Landlord and Tenant shall each have the right from time to time by giving written notice to the other, to change their respective above designated address and names of the parties to who notices and demands are to be sent.

Section 40. LEASE BINDING, ETC.: Except as otherwise expressly provided herein, this Lease and all provision, and shall insure to the benefit of Landlord, Tenant, and their respective heirs, legal representatives, successors and assigns. Substantive and procedural law of the State of Alabama govern this agreement.

Section 41. MODIFICATION OF AGREEMENTS: There shall be no modification of this written Lease Agreement except in writing and signed by the party to be charged.

Section 42. PROFESSIONAL FEES AND OTHER COSTS: Tenant agrees to pay Landlord, or on Landlord's behalf, a reasonable attorney or other professional fee in the event Landlord employs an attorney or other professional for any of the following purposes: to collect any rents due hereunder by Tenant; or to protect the interest of Landlord in the event that Tenant is adjudicate or adjudged bankrupt; or legal process is levied upon the good, furniture, effects or personal property of the Tenant upon said premises or upon the interest of the Tenant in this Lease or in said premises; to prevent the Tenant herein contained. Tenant further agrees to pay all other reasonable costs incurred by covenants on the part of the Tenant herein contained. Tenant further agrees to pay all other reasonable costs incurred by Landlord in securing the performance by Tenant of all said terms, conditions, or covenants of this agreement. Said Landlord in securing the performance by Tenant of all said terms, conditions or covenants of this agreement. Said reasonable attorney's fees and other costs shall be not less than actual cost to Landlord for said services. Reasonable fees shall be deemed to be not less than the normal hourly rate or rates charged by Landlord's said professionals for other or similar work done by said Professionals. The billing and collection of said professional fees and other costs shall not require Landlord filing suit against Tenant for

the performance of the terms, conditions and obligations of said Lease.

Section 43. CAPTIONS AND HEADINGS: The captions and heading of the Articles and Sections of this Lease Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 44. TIME IS OF THE ESSENCE: Time is of the essence with respect to the performance of each of the covenants and agreements under this Lease.

Section 45. CONSTRUCTION OF TERMS:

(a) Printed parts of this Lease shall be as binding upon the parties hereto as other parts hereof. Parts of this Lease which are written or typewritten shall have no greater force of effect than, and shall not control, parts which are printed, but all parts shall be given equal effect. Tenant declares that Tenant has read and understands all parts of this Lease, including all printed parts hereof. If any provision contained in a rider, if any, is inconsistent with a printed provision, the rider provision shall control.

(b) Any provision or provisions of this Lease which may prove to be invalid, void or illegal shall in no way affect, impair, or invalidate any other provisions hereof shall nevertheless remain in full force and effect.

Section 46. WAIVER REGARDING BILLINGS: Tenant's failure to object to any statement, invoice or billing rendered by Landlord with a period of sixty (60) days after receipt thereof shall constitute Tenant's acquiescence with respect thereto and shall render such statement invoice or billing due and payable by Tenant.

Section 47. NO PERSONAL LIABILITY OF LANDLORD: The term "Landlord" as used in the Lease means only the owner or mortgagee in possession for time being of the building in which the Leased premises are located or the owner of a leasehold interest in said building and/or land, Landlord shall be and hereby is entirely freed and relieved of all obligations of Landlord subsequently accruing.

It is specifically understood and agreed that there shall be no personal liability of Landlord (nor Landlord's agent, if any) in respect to any of the covenants, conditions or provisions of this Lease

Section 48. HOLDING OVER.

(a) If Tenant holds over the Landlord's written consent after expiration or other termination of this Lease, or if Tenant continues to occupy the premises after termination of Tenant's right of possession pursuant to other provisions in this Lease, Tenant shall through the entire holdover period, pay rent equal to twice the rent which would have been applicable had the term of this Lease been continued through the period of such holding over by Tenant.

(b) No possession by Tenant after the expiration of the term of this Lease shall be construed to extend the term of this Lease unless Landlord had consented to such possession in writing.

Section 49. TRANSFER BY LANDLORD.

In the event Landlord transfers Landlord's interest in this Lease, Landlord agrees to promptly provide Tenant with documentary evidence, satisfactory to Tenant, of such transfer of Landlord's interest in this Lease.

If Landlord assigns this Lease (except as security for a loan), then Landlord shall thereupon be released from all liability and obligations of Landlord hereunder arising after such assignment.

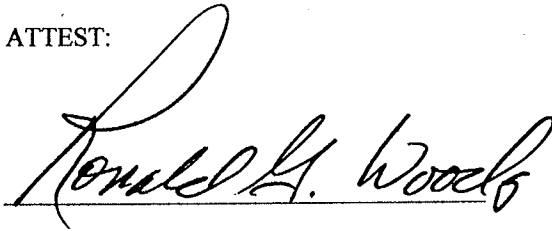
Section 50. REPRESENTATIONS OF TENANT AND LANDLORD AS TO THE ENTIRETY OF THE AGREEMENT, ETC.

Tenant hereby represents to Landlord and Landlord hereby represents to Tenant that this lease sets forth the entire agreement between the parties.

Section 51. Memorandum of Lease. Landlord and Tenant will execute a Memorandum of Lease in the form attached hereto as Exhibit D, and the Landlord will record the same at Landlord's expense.

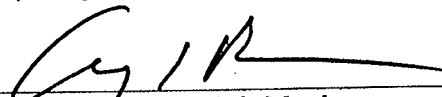
IN WITNESS WHEREOF, the parties have respectively executed this agreement the day and year first above written:

ATTEST:



Ronald H. Woods

LANDLORD:
BEERS PROPERTIES, LLC, an Alabama limited liability company




By: Greg Beers, Its Sole Member

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority in and for said County, in said State, hereby certify that Greg Beers, whose name as Sole Member of Beers Properties, LLC, an Alabama limited liability company, is signed to the foregoing instrument is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such Sole Member and with full authority executed and delivered the same voluntarily as and for the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 25th day of July, 2006.

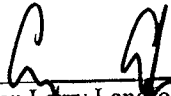


Brenda D. Phillips
Notary Public
My commission expires: January 06, 2007

SIGNATURE PAGE TO AMENDED AND RESTATED LEASE AGREEMENT

ATTEST:

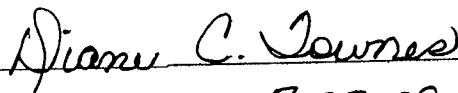
TENANT:
JEFFERSON COUNTY ALABAMA


By: Larry Langford
President, Jefferson County Commission

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority in and for said County, in said State, hereby certify that Larry Langford, whose name as President of the Jefferson County Commission, is signed to the foregoing instrument is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer, and with full authority, executed and delivered the same voluntarily for and as the act of said Jefferson County Commission, on the day the same bears date.

Given under my hand and official seal this 29 day of Aug., 2006.



Notary Public
My commission expires: 7-23-09

APPROVED BY THE
JEFFERSON COUNTY COMMISSION
DATE: 8-29-03
MINUTE BOOK: 121
PAGE(S): 554